

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  MR. AND MRS. GREGORY SWECKER,  Complainant,  vs.  MIDLAND POWER COOPERATIVE,  Respondent.	DOCKET NO. FCU-99-3 (C-99-76)
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**ORDER DENYING REQUEST FOR STAY**

(Issued October 29, 1999)

On October 20, 1999, Central Iowa Power Cooperative and the Iowa Association of Electric Cooperatives (collectively, the Intervenor) filed a document entitled "Intervenors' Appeal From Order Denying Partial Motion To Dismiss" (the Appeal) with the Iowa Utilities Board (Board). The Intervenor state that on September 16, 1999, they filed in this docket a partial motion to dismiss. They further state that on October 8, 1999, the administrative law judge issued an order denying their partial motion to dismiss, from which order they are now appealing.

As a part of their appeal, Intervenor request a stay of any further action in this docket while the Board reviews the appeal.

The Board will deny the request for stay. This docket has been pending since June 23, 1999, and the procedural schedule has already been the subject of at least

two orders delaying the hearing on the merits. The Intervenor's motion is, according to its own title, only a partial motion to dismiss; even if the motion were granted, it would not dispose of all issues in this docket. Resolution of the issues raised in the appeal may require some time. A stay while those issues are considered by the Board would unduly delay the final resolution of the remaining issues in this case.

Moreover, it is possible that Intervenor's partial motion to dismiss will be rendered moot by the final outcome of this case. The gist of Intervenor's partial motion to dismiss appears to be that the Board lacks authority to set rates for Midland Power Cooperative (Midland); Intervenor appears to believe that is a possible outcome, if the Board finds Midland's existing rates or charges are discriminatory and in violation of IOWA CODE § 476.21 (1999). Whatever the merits of that argument may be, the fact remains that if the Board finds Midland's rates and charges are in compliance with applicable law, then the question of whether the Board can set rates for Midland will be moot. The efficient use of the Board's limited resources requires that the Board deny the stay and permit the proceeding on the merits to continue before the administrative law judge, rather than stop those proceedings to consider an issue that may ultimately be moot.

**IT IS THEREFORE ORDERED:**

The request for stay filed by the Iowa Association of Electric Cooperatives and Central Iowa Power Cooperative on October 20, 1999, is denied.

**UTILITIES BOARD**

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Raymond K. Vawter, Jr.      /s/ Diane Munns  
Executive Secretary

Dated at Des Moines, Iowa, this 29<sup>th</sup> day of October, 1999.